STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

JOHN DELOMBA)
)
VS.) W.C.C. 00-01653
)
NATIONAL INVESTMENT, LTD.)

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard before the Appellate Division upon the appeal of the petitioner/employee and upon consideration thereof, the appeal is denied and dismissed, and it is:

ORDERED, ADJUDGED, AND DECREED:

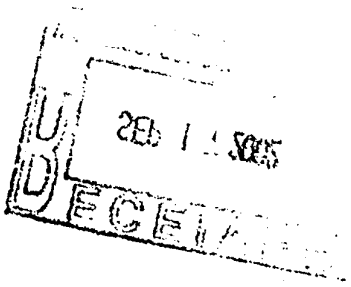
The findings of fact and the orders contained in a decree of this Court entered on November 14, 2001 be, and they hereby are affirmed.

Entered as the final decree of this Court this 17th day of September, 2002.

BY ORDER:

Dennis D. Revens

Dennis I. Revens Administrator



ENTER:

Arrigan, C.J.

Healy, J.

Olsson, J.

I hereby certify that copies were mailed to John DeLomba and Francis T. Connor, Esq., on September 10, 2002.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

NATIONAL INVESTMENT, LTD.)
)
VS.) W.C.C. 98-06531
)
JOHN DELOMBA)

FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard before the Appellate Division upon the appeal of the respondent/employee and upon consideration thereof, the appeal is denied and dismissed, and it is:

ORDERED, ADJUDGED, AND DECREED:

The findings of fact and the orders contained in a decree of this Court entered on November 14, 2001 be, and they hereby are affirmed.

Entered as the final decree of this Court this 17th day of September, 2002.

BY ORDER:

Dennis J. Revens Administrator

ENTER:

Arrigan, C.J.

Healy, J.

Olsson, J.

I hereby certify that copies were mailed to John DeLomba and Francis T. Connor, Esq., on September 10, 2002.

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

NATIONAL INVESTMENT, LTD.	)	
	)	
VS.	)	W.C.C. 98-06531
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JOHN DELOMBA	)	
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VS.	)	W.C.C. 00-01653
	)	
NATIONAL INVESTMENT, LTD.	)	

DECISON OF THE APPELLATE DIVISION

OLSSON, J. These two (2) matters come before the Appellate Division on the appeals of the employee from adverse decisions and decrees of the trial judge. After careful consideration of the record made available to the panel, we deny and dismiss the employee's appeals and affirm the trial judge's findings and orders.

The employee had been receiving weekly benefits for partial incapacity since April 21, 1998, pursuant to a Pretrial Order entered in W.C.C. No. 98-02680 on July 31, 1998. In that order, it was found that the employee

developed left shoulder impingement syndrome, as a result of his work activities, and became disabled due to that condition on April 21, 1998.

W.C.C. No. 98-06531 is an Employer's Petition to Review alleging that the employee's incapacity for work has ended. The petition was granted at the pretrial conference on February 10, 1999, and the employee's weekly benefits were discontinued as of that date. The employee claimed a trial.

W.C.C. No. 00-01653 is an Employee's Original Petition alleging that, in addition to the left shoulder problem, the employee also injured his neck and back on April 20, 1998 as a result of his work activities. It was agreed by the parties that this petition would be considered in the nature of an Employee's Petition to Review alleging that the Pretrial Order entered in W.C.C. No. 98-02680 did not accurately describe the nature of the injury sustained by the employee. The petition was denied at the pretrial conference and the employee claimed a trial. The two (2) matters were then consolidated for hearing by the trial judge.

After a trial on the merits of both petitions, the trial judge granted the employer's petition and denied the employee's petition. The employee claimed appeals in both matters. Subsequent to the filing of the claims of appeal, the employee agreed to allow his attorney to withdraw from the case. Mr. DeLomba, acting Pro se, proceeded to file his reasons of appeal. Although notices were sent to his last known address, he did not appear for oral argument. Under the circumstances, we find no prejudice in proceeding to decide the appeals.

It should be noted that although the employee apparently testified in these matters, a transcript of the hearings before the trial judge was not ordered. The issues presented by these petitions are essentially of a medical nature and all of the medical evidence is in documentary form and available for our review. The material available to the panel consists of two (2) depositions and records of Dr. Christopher N. Chihlas, two (2) depositions and the affidavit and records of Dr. W. Lloyd Barnard, and the deposition and records of Dr. Christopher F. Huntington.

The scope of review by the Appellate Division has been strictly circumscribed by statute. Rhode Island General Laws § 28-35-28(b) provides that "The findings of the trial judge on factual matters are final unless an appellate panel finds them to be clearly erroneous." In the case of conflicting medical evidence, the appellate panel must first make a finding that the trial judge was clearly wrong before undertaking a *de novo* review of the evidence and rejecting the trial court's findings. Diocese of Providence v. Vaz, 679 A.2d 879 (R.I. 1996).

The employee's reasons of appeal filed in both matters read as follows:

> "The Judge made an error in denying my claim. I have sufficient evidence the Judge ignored material evidence in support of my claim. Also, there were errors in judgements on the treatments I received. He took [sic] to long to make the decisons [sic] on all my workers comp. experiences. I think he is a good man but something in my case got by him and I wish to appeal my case."

Rhode Island General Laws § 28-35-28(a) requires that the appealing party must file "...reasons of appeal stating specifically all matters determined

adversely to him or her which he or she desires to appeal,. . . ." The employee in this case bears the burden of specifying in what manner, or where in the record the trial judge committed error. Falvey v. Women & Infants Hosp., 584 A.2d 417, 419 (R.I. 1991). It is clear from reading the reasons submitted by Mr. DeLomba that they do not satisfy this standard and are merely general statements of error providing no guidance to the appellate panel. For this reason alone, we would deny the employee's appeals in both matters. However, our review of the record reveals that there was no error on the part of the trial judge in his determination of the issues.

Dr. Christopher N. Chihlas, an orthopedic surgeon, began treating the employee for his work-related injury on June 1, 1998. At that time, the complaints were focused on the left shoulder area and the employee denied any neck pain. At the second visit on June 10, 1998, the employee reported that he also had pain in the right side of his neck and his right shoulder; however, the examination of those areas was normal. In October 1998, the employee complained of neck pain occasionally radiating down his arm. Cervical x-rays revealed significant degenerative disc disease in the cervical spine. On November 11, 1998, the employee's physical examination was normal and Dr. Chihlas released him to return to work without restrictions. He repeated this opinion on December 9, 1998 after another normal physical examination.

Dr. Chihlas testified that Mr. DeLomba never mentioned any low back complaints to him during the course of his treatment. The doctor also stated that he never diagnosed a cervical strain or other neck injury.

The employee began treating with Dr. W. Lloyd Barnard, an orthopedic surgeon, on November 20, 1998. The initial evaluation was essentially normal except for an area of tenderness where testing had revealed a bony irregularity in the left shoulder. On January 7, 1999, the doctor indicated that the employee could return to his regular duty work in two (2) weeks. As of March 11, 1999, Dr. Barnard discharged the employee without restrictions.

The doctor testified that the employee never complained about his back during the course of his treatment. He also stated that the employee could have sustained a cervical strain because it was difficult sometimes to differentiate the source of muscular problems in the shoulder and neck. However, he pointed out that there was no disability flowing from it.

Mr. DeLomba apparently maintained that he was unable to work due to the pain and discomfort he associated with the April 20, 1998 injury. He sought further treatment with Dr. Christopher Huntington, an orthopedic surgeon, on August 13, 1999. The diagnosis was degenerative disc disease at C5-6 and chronic lumbar strain. The doctor found the employee totally disabled and attributed his problems to the April 1998 injury.

The trial judge chose to rely upon the opinions of Dr. Chihlas and Dr. Barnard, two (2) treating physicians, in finding that the employee's incapacity for

work had ended. He also cited their testimony in concluding that the employee did not sustain any neck and back injuries on April 20, 1998. The trial judge noted that he found the opinion of Dr. Huntington as to causation improbable, in that the development of the complaints was so far removed from the date of injury.

The trial judge, in this matter, was faced with conflicting medical opinions regarding the disability and the nature of the injuries sustained by the employee. He chose to rely upon the opinions of the two (2) earlier treating physicians who saw the employee from June 1998 to March 1999. It is well-established that such a decision is within the discretion of the trial judge. Parenteau v. Zimmerman Eng.'g, 111 R.I. 68, 299 A.2d 168 (1973). Dr. Huntington did not see the employee until August 1999, sixteen (16) months after the injury. The trial judge cited the lapse of time, lack of positive physical findings and diagnostic test results in support of his decision to rely on Drs. Chihlas and Barnard. We find no error in his reasoning and conclusions on the issues presented by the two (2) petitions.

Based upon the foregoing, the employee's appeals are denied and dismissed and the decisions and decrees of the trial judge in both matters are affirmed.

In accordance with Sec. 2.20 of the Rules of Practice of the Workers' Compensation Court, final decrees, copies of which are enclosed, shall be entered on September 17, 2002 at 10:00 a.m.

Arrigan, C.J. and Healy, J. concur.

ENTER:

Arrigan, C.J.

Healy, J.

Olsson, J.